

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MADHU JAIN,

Plaintiff,

v.

A CAPE ANN WHALE WATCH, INC.,

Defendant.

CIVIL ACTION NO. 05-11267-MEL

MOTION IN LIMINE REGARDING REPORT OF DR. DATTA

Defendant, A Cape Ann Whale Watch, Inc, (“Cape Ann”), hereby move *in limine* to bar introduction of a report authored by one Dr. Vinod Datta. In support of its motion, Cape Ann will submit a copy of the said report at the pre-trial conference on June 6, 2007.

The report in question is in the nature of an expert report. It is a letter addressed to the plaintiff’s counsel, and includes the opinions of the author as to the specifics of this case.

The letter is hearsay. It overtly denies Cape Ann the ability to cross examine its author. It is not saved by any exception to the hearsay rule. In particular, it cannot be saved by the “business records exception” upon which the plaintiff seeks to rely. This is because an opinion letter written to a lawyer is obviously a document created for the purposes of litigation. This is the fundamental antithesis of a document created in the “ordinary course of business” — *i.e.*, for the treatment of a patient.

Physicians commonly testify to medical opinions. But to do so, they must be properly identified as experts and must be subject to cross examination. Neither of these has taken place with respect to Dr. Datta. As a result, the document in question must be excluded from evidence.

WHEREFORE, Cape Ann moves that the Court exclude the written submission of Dr. Datta by reason of its being at odds with the principles identified above.

CERTIFICATE OF SERVICE: Undersigned counsel hereby certifies that s/he has this day provided a true copy of this document to all counsel of record and all parties appearing pro se (if any) by the method indicated alongside their respective names as shown below.

Dated: June 4, 2007

served upon:

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